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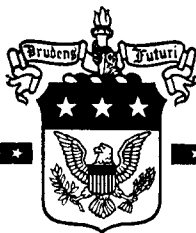
WORLD PEACE THROUGH THE RULE OF LAW

By

SEP 27 1966

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8 April 1966

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SUMMARY

The World Peace Through the Rule of Law idea has this primary objective: to strengthen the body, the machinery, the acceptance, and the sanctions of international law so that law will increasingly come to occupy the place in international affairs that it does in the domestic affairs of civilized nations. For years people have been calling for a positive plan for world peace. Everyone knows that past efforts have been too often negative. Get rid of war. Get rid of armaments. But we cannot just get rid of these things and leave a vacuum. Something else must be put in their place. What is that something? In the human story, it has always been law.

How do we go about creating a world rule of law? What are the component parts, the building blocks, of any legal order? How can we get down to the business of creating methodically these component parts on the international scale?

There are four main ingredients of a working system of law for the settlement of disputes. They are:

1. A body of law that is accessible, up to date, and capable of deciding the disputes that cause tension in the world as it is today.
2. Machinery to apply that law--machinery which is also accessible, up to date, and adapted to settling the kind of disputes that today's world produces.
3. Acceptance of that body and that machinery of law by the persons affected--and here we must remind ourselves that many of the people of the world do not regard present international law and tribunals as their law and their tribunals.
4. Compliance with the decisions of international tribunals once they are rendered.

The above statement of the exact job to be done in building the rule of law on an international scale is the main theme of this thesis.

The author looks at the origin and development of the international law system, a procedure for the building of a law structure of peace, the organizations that are helping to build the program, and the need for government leadership worldwide in the carrying out of the program.

CHAPTER 1

INTRODUCTION

The people of the United States are often favored with flights of oratory extolling the "rule of law" among the nations, but practical action to achieve it has largely remained grounded. One reason is a lack of agreement as to the meaning of the phrase. Is it an objective, a program of action, or merely a slogan?

Facile and sometimes misleading analogies are drawn to highly developed legal systems, with resulting confusion between cause and effect. It is erroneously assumed that the disordered condition of the world results from the absence of codes, courts and constabulary. A clearer perspective might be gained by approaching the matter just the other way round.

The lack of rules and the inadequacy of machinery for cooperation are surely symptoms, rather than causes. They reflect almost total absence of prime prerequisites of any legal system: an organized will and a moral purpose. Except upon such foundations, a legal order cannot be created without recourse to unacceptable devices of coercion.

In an age balanced on the edge of terror and the rim of space, oversimplified solutions are hard to resist. World government proposals are alluring, though they focus too much upon mechanisms of order, without giving heed to the political and moral fuel needed for motive power. Likewise, some are drawn to

ethical abstractions, such as "moral rearmament," which stress good intentions but ignore the mechanisms needed in order to bring moral forces to bear in specific cases.

The function of the lawyer is to help identify the circles of common interest which exist in a close-knit world of sovereign states. His task is to define the principles and institutions by which those common interests may be furthered. It is in these practical and specific ways that he can help forge a sense of "community," which remains a mere literary expression unless it reflects a sense of common interest and a capacity for self-discipline.

There are many, and often unsuspected, areas of common interest, even between East and West. Some "law" already exists; more can be developed. Examples include rules of the road for sea and airways; the agreement, to which both the United States and Soviet Union are parties, prohibiting militarization of Antarctica; and the agreement, reached during the 1961 session of the General Assembly to continue the United Nations Committee of the Peaceful Uses of Outer Space, upon which both governments sit. The United States and the Soviet Union have concurrently condemned stationing, orbiting or testing weapons in outer space.

The emergence of new states likewise offers wide opportunities for American cooperation in helping develop concepts and scope of international law, and in training indigenous lawyers and administrators. The United Nations is an excellent vehicle for this

purpose, enriched and supplemented by the work of private institutions, such as American law schools and bar associations, which have already begun programs to provide consultants, teachers, libraries, and educational materials.

The United States should, above all, take a lead in extending the rule of law among like-minded nations. One practical way in which to give greater dimension to the Atlantic community would be to move forward to a well-developed rule of law among its members, including increased resort to the International Court of Justice. The Western European nations, with their growing common institutions and their Court of Human Rights, are already on that road.

Indeed, it is difficult to envisage a "concert of free nations" without the sinews of common legal principles and a common will to further legal processes in their mutual dealings. By becoming a "rule-of-law bloc," the free nations could lead the way toward a just order by practice as well as expound it by precept.

Ernest A. Gross, in his book, The United Nations Structure for Peace,¹ discusses the above expressed views and was the inspiration to this author to delve further into the subject.

During the past eight years I have been an active member of the American Bar Association and have participated in the World Peace Through Law Committee work. I have had the opportunity to assist in the development of the World Peace Through Law Program

¹Ernest A. Gross, The United Nations Structure For Peace, pp. 116-119.

and it is from this association that I am convinced that lawyers, worldwide, have a responsible role to play in the application of their skills and experience in the development of new standards and procedures for keeping peace. They can find more effective ways to use existing institutions, such as the United Nations and the International Court of Justice, and expose demagogic or illusory formulas. As community leaders, and in their associations, lawyers can further public understanding that national self-interest is rooted in the common interest of all nations in a just peace through law.

The job at hand is to determine the means by which we can go about the task of bringing into reality the aspirations of the millions of people that peace might come to the world by a rule of law. This, of course, is an old dream. It is a dream which men and women have borne in their hearts for a long time past. And yet, over the centuries, they have failed to be able to bring peace by rule of law into existence, despite all their efforts.

If we look back over the recent years, if we look back over the period of this half century, we know that after the first World War, it was believed that through a League of Nations, we could attain peace by peaceful methods, and that proved to be an illusion. Then, after the carnage of the last World War, we established the United Nations, and that has been going through difficulties.

It seems to me that the national and international organizations that are devoting their efforts to the World Peace Through

the Rule of Law Program can make the greatest contribution by recognizing some of the great limitations which stand in the way and find means of overcoming them, if they recognize that the task of bringing world peace by law is not something which can be done in a short period of time. It is not something which can be achieved by resolutions. It is not something which can be reduced to formula. It is something which requires the steadfast and constant attention of men and women worldwide over a long period of time.

The conferees who attend the national and international organizational meetings and conferences to discuss ways and means of achieving world peace through law can perform a great service on return to their countries. For there, their task will be not only to persuade the leaders of the countries that it is only through law that man can avoid the devastation of war, but it will be necessary to educate peoples, so that their people will themselves make clear to their leaders that this is what they need and this is what they demand. It is only by world opinion, only by the pressure of the views, the educated views, of people in different parts of the world, that we ultimately are to achieve the goals at which we are all aiming.

In the succeeding chapters of this thesis I attempt to develop the concept of the rule of law as an alternate means of settling disputes among sovereign states. Emphasis is placed on the origin and development of an international law system,

how to go about creating a world rule of law, the component parts and the building blocks of any system of legal order. A discussion is also included on what our statesmen and national and international organizations can do to further the concept of the rule of law. Conclusions are offered for consideration by the reader.

CHAPTER 2

THE ORIGIN AND DEVELOPMENT OF AN INTERNATIONAL LAW SYSTEM

The traditional international law system dates from the Treaty of Westphalia of 1648, which marked the formal recognition of states as sovereign and independent political units. However, although the present system of international law is technically European, it has drawn much from earlier periods of history and has origins which date to milleniums B.C., and which are by no means limited to Europe.¹

The roots of international law delve deeply into the beginning of recorded history. Beginning with treaties between the Egyptian Pharaohs and their neighboring monarchs,² and progressing through negotiations of the Hebrew Kings,³ a form of international law has permeated all history. The Egyptian Pharaohs entered into treaties with neighboring kings as early as the fourteenth century B.C., and there were similar treaties by the early Hebrew Kings. The texts of many early treaties have been preserved on tablets and monuments. They deal with such subjects as peace, alliances, extradition, and the treatment of envoys. Their sanctions were

¹Norman J. Padelford, and George A. Lincoln, The Dynamics of International Politics, p. 468; and James L. Brierly, The Law of Nations, pp. 1-41.

²James H. Breasted, Ancient Records of Egypt, III, 163ff cited in Charles G. Fenwick, International Law, p. 5.

³Thomas A. Walker, A History of the Law of Nations, I cited Ibid.

religious and very elaborate, including an invocation of the gods, often many gods being cited by name.

The philosophers of the ancient Chinese and Indian empires developed lofty precepts of universal conduct, and such schemes as the Grand Union of Chinese States, planned by Confucius (551-479 B.C.), vaguely suggests the League of Nations' concept. There were even certain codes and rules of law, which, however, seem to have been limited to the separate states of these empires and often violated in practice. Certainly, important traces of international law are to be found in these early civilizations, and, if adequate primary sources of these civilizations had not been destroyed, it is highly possible that rules similar to those found in the West could be shown to exist.⁴

The Greeks possessed an unusual foundation for a community of interests in their common race, language, religion and customs. This was counterbalanced, however, by intense Greek loyalty to city and emphasis on the superiority of Greek culture and virtue over that of non-Greeks, who were generally regarded as "barbarians." The rudimentary international system which the Greeks developed bears a closer relation to modern international law than that of any subsequent system prior to 1648. Greek city-states carried on an intense trade both among themselves and with the outside world. This led to the recognition of mutual obligations which

⁴Bandyopadhyay Pramathawath, International Law and Customs in Ancient India, pp. 15-25.

were expressed in treaties and contracts. There were missions abroad which enjoyed extensive privileges and whose reception was accompanied with elaborate formalities. Diplomats were safeguarded by the establishment of severe penalties for those who mistreated them.⁵ Consuls also served Greek interests. Reciprocally, some protection of resident foreigners was granted. Although Greeks were aliens in other cities than their own, they possessed rights as aliens, based partly on treaties and partly on the recognized rules of hospitality. A forerunner of our present treaties and conventions for the settlements of disputes before international tribunals was the treaty of alliance between Sparta and Argos in 418 B.C.,⁶ which stipulated, among other things, that each would submit their differences to arbitration "on fair and equal terms, according to their ancestral customs."

Prior to the third century B.C., Rome was a city-state like the city-states of Greece. It recognized, as such, the independence and equality of other city-states and maintained treaty and diplomatic relations with them. A rudimentary prototype of the organization and relations of political units similar to the new nation-states of the 17th century was discernible. Rome, like Greece, with a highly developed culture and civilization, was

⁵Arthur Nussbaum, A Concise History of the Law of Nations, pp. 14-15.

⁶Charles Phillipson, International Law and Customs of Ancient Greece and Rome, Vol. 79; cited Fenwick, op. cit., p. 6.

surrounded by "barbarians," whom it considered as objects for conquest and rule.

When Rome became the mistress of the world its new obligations as the world's dominant power led it to develop a jus gentium, often referred to as the "law of nations" but which was in fact the Roman civil law applied to foreigners and to relations with the outside world. The confusing concept of the jus gentium varies in different periods. Historically it seems to have little to do with foreign experience; philosophically it seems to include legal institutions and rules found everywhere and to constitute a universal law. At times it has been interpreted as almost indistinguishable from the jus naturale, or natural law, and hence to possess principles which are not only universal but reasonable, just, and equitable. Although the jus gentium belongs to private international law rather than public international law, it greatly influenced the thought of the sixteenth and seventeenth centuries because of its high authority and convenient frame of reference.

The Romans, with their far-flung empire, greatly developed institutions of international communications and rules to govern them. They also maintained the principle of the sanctity of international obligations and the rights and privileges of ambassadors, which, like the Greeks, they solemnized by religious rituals.

The Greeks provided a philosophical basis for the concept of unity and universality. Pax Romana was its administrative embodiment. A certain sense of community was obtained by the expansion

of Roman law into Western Europe. Christianity was later to supply such sense of community as survived the breakdown of Roman power. At least the idea of unity which the empire embodied remained for hundreds of years as a symbol of law and order. Greek and Roman legal concepts are still basic to a study of legal thought and institutions.

After the fall of the Roman Empire the only approaches to even a semblance of international law were the international private and commercial treaties governing commerce between the maritime nations.⁷

The Treaties of Osnabruck and Munster which effected the Peace of Westphalia in 1648 concluding the Thirty Years War contained the modern basis of international law as it is regarded in today's context. These treaties established rules of law and arbitration between the European powers of that day. It is significant to note that Russia was not included within the purview of these treaties as she was not then regarded as a European power. Russia, however, was later admitted.⁸

The Treaty of Versailles, in 1783, marked the appearance of what is now the United States of America into the world scene of international law.⁹ This treaty marked the recognition of the

⁷The Rhodian Laws, Circa 7th century; the Tabula Amalfitana, 11th century; the Law of Oleron, 12th century; Laws of Wisby, 13th century; and the Consolato del Mare, 14th century. Ibid., p. 12.

⁸In 1721, Ibid., p. 101.

⁹Ibid.

new American Republic by the nations of the world. American emergence on its own as a sovereign state into the field of international law, however, was definitely established on December 2, 1823, with its declaration of the Monroe Doctrine. This Doctrine was significant also in the substantive field of international law in that it laid the foundation for the development of a regional system of sub-community of nations within the larger framework of the overall community of nations.

No significant treaties nor conventions took place within the balance of the 19th century until that century's last year. On May 18, 1899, at the invitation of the Tsar of Russia, the first Hague Peace Conference was held. This first Conference was an epochal event because it demonstrated the possibilities of international lawmaking by common consent, although it was not a notable success in strengthening the political structure of the international community. Also it was primarily a European conclave.¹⁰ In so limiting its participants the Conference deliberately limited its possibilities of worldwide influence. This Conference failed to even approximate the adoption of any convention requiring the peaceful arbitration of international disputes. Even though the gathering war-clouds of international tensions should have pointed out the urgency of such a provision during the interim between the first Conference in 1899 and its

¹⁰Only the USA and Mexico were included from all the independent nations of the Western Hemisphere. Ibid., p. 20.

subsequent Conference in 1907, this second Conference in its Final Act did no more than express its unanimous acceptance of "the principle of compulsory arbitration."¹¹ It is significant to note that out of the thirteen conventions adopted at the 1907 Conference, eleven of these dealt with war.¹²

The efforts of the first few years of the twentieth century to devise means for the preservation of peace received a rude shock in the first World War. This showed that states were no less ready than before to use force and fight wars to obtain policy objectives and that war, rather than law and courts, was still considered to be a valid and legitimate means of expressing state force. It also showed the impracticality of placing much faith in rules to humanize warfare, when these rules would be set aside by "military necessity." The fundamental doctrine of faith in treaties was ignored by Germany when, on this same plea of "military necessity" it violated the neutrality of Belgium, which had been solemnly "guaranteed" by treaty.

In January 1918 President Wilson announced his Fourteen Points, which were to become the basis of the subsequent peace settlements and the new world order. In a speech of July 4, 1918, the President said that one of the great objectives of the war was "the consent of all nations to be governed in their conduct towards

¹¹A. P. Higgins, The Hague Peace Conferences and Other International Conferences Concerning the Laws and Usages of War: Texts of Conventions with Commentaries, citing "Declaration Respecting Obligatory Arbitration," p. 538.

¹²Ibid., p. 541.

each other by the same principles of honor and of respect for the common law of civilized society that govern the individual citizens of all modern states" The series of peace treaties that followed the war not only dealt with territorial and other problems created by the hostilities, but included provisions for the reduction of armaments and the payment of reparations; and the Covenant of the League of Nations made important changes in the organization of the community of nations and in some of the substantive and procedural rules of international law.¹³ A new principle of collective security replaced the old idea of the balance of power and a new and different emphasis was on use of sovereignty as a means of creating institutions to achieve and maintain peace. The principle of self-determination played an increasingly important role. The creation of the Permanent Court of International Justice marked the culmination of years of effort to improve the judicial means of settling international disputes. The establishment of an International Labor Organization laid a foundation for the improvement of labor conditions in countries all over the world.

In the decade following World War I several efforts were made outside of the League system to reduce armaments and limit the use of war. At the Washington Conference of 1921-1922 an attempt was

¹³For the text of the Covenant of the League of Nations see American Journal of International Law, Vol. 13, Supp., p. 541.

made by several great naval powers to limit naval armaments, though the results were disappointing. In 1924, the Geneva Protocol attempted to prohibit or outlaw aggressive war, which was declared to be an international crime. The Protocol required states to submit all disputes which might give rise to hostilities to compulsory arbitration or to other peaceful means of settlement. An aggressor state was one which went to war in violation of the League Covenant or the Geneva Protocol. However, the Protocol was an aspiration rather than a binding legal agreement. By the Locarno treaties of 1924-1925 states aimed to strengthen the peace by pledges of non-aggression, and provided for the peaceful settlement of their disputes, principally by arbitration and the use of the World Court. In 1928, by the Pact of Paris, often referred to as the Kellogg-Briand Pact, states renounced war "as an instrument of national policy" and agreed to settle all of their disputes by peaceful means, but the meaning of the Pact is not clear and has remained controversial.¹⁴

It would appear, from the efforts from within and outside of the League system, that the decade following World War I had witnessed considerable progress in the field of international law and relations. The scope of international law had been expanded. Previously-held untenable views of sovereignty had been weakened by the developing idea of using sovereignty to build instrumentalities and law rules for peace through collective security.

¹⁴Cited Fenwick, op. cit., pp. 684-685.

Resort to war as a right was either denied or seriously questioned. Although armaments had not been reduced, states, according to the theory of collective security, did not need to rely exclusively upon their own armaments for defense.

There were weaknesses in the community of states and there were clouds upon the horizon. The United States remained outside of the League of Nations and disabilities had been placed upon a recalcitrant Germany. As early as 1921 the League failed to settle the question of Vilna. In 1931 the invasion of Manchuria by Japan again showed the weakness of the new system of collective security. China was clearly entitled to League protection, but the League was unwilling to provide effective sanctions against Japan. In 1933, when Bolivia and Paraguay went to war, the League passed the responsibility for action to the inter-American regional system which proved inadequate to meet the situation. Then in 1935 Italy attacked Ethiopia. This time the League applied economic sanctions, but when these proved futile the League failed to take effective action. States came to realize that they could not rely upon the League for protection, and several of them withdrew from the League. The states of the world were rapidly drifting toward another world war.

The huge losses and great devastation resulting from belligerent activities in World War II led to a determined effort, even during the war, to prepare for a sound and peaceful post-war period. In 1941, the President of the United States and the

British Prime Minister proclaimed in the Atlantic Charter common principles for the establishment of a future peace. Proposals for the creation of a general organization were made by representatives of the United States, Great Britain, and Russia in Moscow in 1943, at Dumbarton Oaks in Washington in 1944, and at Yalta in early 1945. In June 1945 the Charter of the United Nations was adopted at San Francisco, and a new world organization was born, with the hope of accomplishing what the League of Nations had failed to accomplish--provide the necessary machinery and take the necessary action to maintain order and preserve the peace under law rules and legal institutions.

The period since World War II is perhaps too recent and too familiar to require an attempt at even a summary of principal events. It has been characterized by the cold war struggle, by unparalleled technological advances in the production of instruments of destruction, by many new international problems and new views on former problems, and by significant changes in the structure of the international community and influence of newly established states.¹⁵ In spite of this, or perhaps in fact because of it, great efforts have been made by the United Nations, by a multiplicity of international organizations, and by some states and individuals, to lay a firm foundation for an enduring

¹⁵J. Syatauwg, Some Newly Established States and The Development of International Law; also, R. Anand, Role of the New Asian-African Countries in the Present International Legal Order, American Journal of International Law, Vol. 56, pp. 383-406.

peace by attacking fundamental, basic, problems. In art, music, literature, philosophy, architecture, science, and other fields, a significant shift toward the universal is taking place. International law and relations are being summarily shifted in this same direction, with the crucial objective of saving the human race from destruction and developing and utilizing the world's marvelous resources to enrich humanity throughout the world. Let us look, then, at some of the weaknesses of the traditional international law as it existed at the beginning of the twentieth century, and attempt to summarize the progress subsequently made and indicate the general direction which the future might take in order to establish the rule of law throughout the considerably enlarged community of nations.

When the representatives of states met at The Hague in 1899, war was a recognized means of "settling" disputes. The legality of violence was perhaps the most fundamental weakness of international law. As a result of the Covenant of the League of Nations, the Pact of Paris, the Charter of the United Nations, and other agreements, this basic weakness has been eliminated. The International Military Tribunal at Nuremberg declared that a war of aggression or a war in violation of treaties is illegal in international law, and that those who plan and wage such a war commit a crime in so doing. This decision was the basis of the decisions of the Tokyo Tribunal and the courts in the subsequent trials of Germans by occupying powers. It was approved by the

United Nations and codified in principles formulated by the International Law Commission.

At the turn of the century there existed no international court. The Permanent Court of Arbitration was created at the first Hague Conference; but this body was not a real court. It was rather a Secretariat which provided a panel of jurists from which arbitrators could be chosen when needed. The result was the greater availability of skilled arbitrators, but the tribunals to be formed remained as before ad hoc tribunals. It was only after World War I that a truly Permanent Court of International Justice was created by nominations by the national groups in the Permanent Court of Arbitration and election by the League of Nations. In World War II this new Permanent Court of International Justice went out of existence, along with the League of Nations. However, in 1945, a new International Court of Justice,¹⁶ modeled on the former Court, was created as an integral part of the United Nations. As a result, the more than 120 states which are now members of the UN are automatically members of the Court. Submission of cases to the Court is basically voluntary, but the so-called Optional Clause grants compulsory jurisdiction to the Court for such states as care to sign it. Thirty-nine states have signed this Optional Clause but the most part, with disappointing limiting reservations. The development of the compulsory jurisdiction of the Court is an

¹⁶Text of the Statutes of the International Court of Justice, cite Fenwick, op. cit., pp. 710-721.

important task for the future. Compliance with the Court's judgments has been admirable and the quality and experience of the judges leaves little to be desired. However, the future will have to grapple with the question of how states can be induced to submit more of their cases to the Court for final decision, especially important questions; with the problem of how to distinguish legal issues appropriate for adjudication from purely political questions; with the development and use of more regional courts or special chambers of the International Court; and with other means of strengthening the authority of the Court and the respect of states for it.

One weakness of international law which has frequently been pointed out by persons who maintain that international law is not "true" law is its lack of a law-making body. Before the twentieth century this weakness was compensated for only in part by occasional though important lawmaking conferences and multipartite treaties. The enormous increase in the number of international organizations and agencies, especially since World War II, has resulted in new widely-accepted rules of law in many fields and has greatly supplemented the slow growth of international custom and conventional law.

Before the creation of the League of Nations and the subsequent establishment of the United Nations there was no international organization continuously available to meet crises. These two organizations have supplied a crying need in the international field and have been harshly tested by crises which could easily

have otherwise led to war. To be sure, the League of Nations seemed to be rather impotent in the Manchurian affair of 1932; but this was the first time in history when aggression by a great power had been condemned by the community of nations. In the Ethiopian affair of 1935-1936 the League of Nations again failed to restrain hostilities; however, for the first time in history an international body applied economic sanctions in an attempt to avoid war.

Although the League of Nations was unsuccessful in its attempts at collective security, the UN has done much better. Korea was the first important test and marks an early stage in the development of collective security. Although a very large contribution to the forces used in Korea was made by one power, the United States, these forces were collected from many states and were under United Nations command. In the Suez case two great powers, for the first time in history, deferred to the judgment of an international body which condemned their resort to arms and a United Nations international force was established to maintain peace after the withdrawal of foreign troops from the occupied areas. A representative United Nations emergency force has also played a useful role in the complicated Congo situation. But the development of a United Nations peace or police, adequate to meet any international crisis that can reasonably be anticipated, remains for the future to provide.

Traditional international law aimed to govern the relations between states as sovereign political units. But what about the rights of individuals? These rights were protected, if at all,

by states. Diplomatic and consular agents have aided greatly in the protection of citizens abroad. However, claims by foreign citizens or states have had to be espoused before arbitration tribunals, international courts or mixed claims commissions by states. In the twentieth century the status of the individual and the protection in particular of his human rights have greatly improved with the community of nations taking an ever-increasing interest and role. It is a basic objective of the United Nations to protect the fundamental rights of individuals, as evidenced by its Universal Declaration of Human Rights. The economic and social rights of peoples throughout the world have received additional current attention. It remains for the future to develop adequate means by which to protect all of these and other rights of individuals.

Our heritage of international law also needs strengthening by gradually invoking legal principles, based on right, from legal systems that have not yet played a large part in its development. While the origins of international law come from all over the world the international law system known to the modern world is dominantly a Western European system. This is not a heritage to be deplored for it rested primarily on right and justice. But, with the expansion of the community of nations and the great strides made in communications which have drawn the world much closer together, the universality of international law must be encouraged.

At the beginning of the twentieth century most lawyers engaged in the general practice of law had little interest in international law

and little knowledge of it. During the century, however, there has been an increasing tendency and a greatly increasing need for international law to become "lawyers' law."¹⁷ This has been evidenced by the expanded teaching programs of international law in the law schools and the increase in the number of international law case-books. Much remains to be done in expanding the international law teaching programs and improving their quality.

It is wrong to conclude that international law has not progressed with the growing internationalization and interdependence trends of recent years. While it has not kept pace with technological advances it is indeed experiencing a rapid expansion and an increasing utility. A vast body of law and many legal institutions have grown up through the efforts of the United Nations, the International Court of Justice, the International Law Commission, the United Nations specialized agencies, and the many regional organizations such as the European Common Market. As this growth continues and public awareness and acceptance also grow, we may be closer than is now apparent to the world ruled by law which has been mankind's dream since the dawn of civilization.

¹⁷R. J. Jennings, The Progress of International Law, p. 16.

CHAPTER 3

THE BUILDING OF THE LAW STRUCTURE OF PEACE

Most current or recent disputes of major proportions have involved legal questions of a kind which could be handled by judicial and arbitral procedures if the nations of the world, including the United States, would accept these procedures. This is not to say that in today's imperfect world these disputes are in fact going to be settled in court. The point is that by their inherent quality and nature, they are of a kind which could be so handled in whole or in part, if the parties would agree to this method of handling.¹

Claims of expropriations of private property and of interference with international investment are intrinsically susceptible to judicial or arbitral settlement. The International Court has already handled several such disputes. The boundary dispute between China and India, which has all the potentialities of a major source of tension, is in this category. Aerial incidents are also

¹For example, the Berlin crisis and the Suez dispute. The Suez dispute centered around the alleged breach of Egypt's agreement with the Universal Suez Company and the Treaty of Constantinople of 1888. This alleged violation of legal rights was the kind of question that could have been appropriately submitted to the International Court of Justice, just as the nationalization of the Anglo-Iranian Oil Company, an event which also threatened to precipitate war in the Middle East, was submitted. (United Kingdom v. Iran), International Court of Justice Reports for 1951, p. 89; International Court of Justice Reports for 1952, p. 93.

amenable to Court treatment, and several attempts to bring them into court have been made by the United States.²

It is clear, then, that many of the disputes threatening world peace today are in whole or in part the kind of disputes that judicial and arbitral processes could help settle peaceably. Sometimes, of course, there are mixed questions of law and diplomacy in a controversy. For example, the Berlin question is a mixture of disputes over present rights under existing agreements, which are judicable questions, and disputes over what changes should be made in any new regime that might be set up for Berlin and Germany, which questions are obviously political and diplomatic. But this does not mean that the judicial process would not make an important contribution. In such mixed questions, the judicial process could put to rest questions about existing legal rights, and could forestall arbitrary one-sided action in disregard of present agreements and rights, such as was threatened by Premier Khrushchev in the Berlin situation. While peace and order were thus being kept, any needed changes could be worked out by political means. In addition, and in a more general sense, the gradual strengthening of the judicial process in the world would serve to enhance the "habit of law" and the general atmosphere around the world of resort to peaceful settlement of disputes under law, as against impulsive and highhanded disregard of legal rights and procedures.

²For example, see cases nos. 22, 23, 25, 28, 36, 40, and 44 of the International Court's General List, International Court of Justice Yearbook for 1958-1959, pp. 70-84.

What are the building blocks of the law structure of peace? There is no mystery about them; they are the same as the familiar parts of any legal system worthy of the name. First, a body of law that is accessible, up-to-date, and capable of deciding the disputes that cause tension in the world as it is today. Second, machinery to apply that law--machinery which also is accessible, up-to-date, and adapted to settling the kind of disputes that today's world produces. Third, the acceptance of that body of law and the machinery by the persons affected--and here we must remind ourselves that most people of the world do not regard the present international law and court as their law and their court. Fourth, compliance with the decisions of international tribunals once they are rendered.

THE BODY OF LAW

The task divides itself into two parts: making existing law accessible, and going beyond existing law to create a kind of law that will be usable by, and acceptable to, not just Western Christendom but the more than one hundred and twenty nations that now must be dealt with.

As to accessibility, we face at once a stark axiom. Non-accessible law is nonexistent law. Philosophers may debate whether there is really a sound when a tree crashes in a wilderness and the sound is not heard by any living creature. But lawyers know that for all practical purposes there is really no

law when the law cannot be found and therefore is never heard by any judge. The objective is clear enough: the materials and evidences of international law should be published, annotated, indexed, and cross-referenced to the same extent as domestic materials.

This relatively unglamorous piece of work, which could keep hundreds of scholars and lawyers busy for years, may seem a far cry from prophetic visions of a world that lives under law--and yet how can a world live under law until it can first find out what the law is?

Here is a task in which universities, bar associations, publishers, and governments can join. Since a task of such magnitude must be spread over years, the best approach may be to begin with areas of law where accessibility of law would now have the most to contribute to relieving of tensions. A good example is the need to compile and annotate all the law bearing on international rivers--so that authoritative guidance will be at hand to aid in the settlement of the many festering disputes on rights in international waters.

But even if all existing international law were accessible, this would only be a beginning. International law must be adapted to today's world, both as to content and as to universality of acceptance.

As to both needs, great promise lies in the "general principles" clause of the Statute of the International Court.³ This

³Article 38, para. 1, Statute of the International Court of Justice.

Statute lists as one of the major sources of international law "the great principles of law recognized by civilized nations." Think of the vast treasures of legal principle to which this clause invites us. The clause tells us that if we look at the internal legal principles of the world's various systems and find a common thread of principles, that thread becomes elevated to the status of binding international law.

It is all too easy to assume that in this age of aggressive nationalism, each sovereign of the world's one hundred and twenty odd nations is considered by his legal system to be the only source of law and therefore above the law. If this were so, obviously the chance for acceptance of a concept of real supra-national law would be slim indeed. However, if we look at the deepest wellsprings of legal tradition in all parts of the world we find almost universal agreement that the sovereign is not above the law--he is under the law. This is not surprising when it is remembered that most major legal systems have religious origins.⁴

Of course, there is evidence of a contrary view in some times and places. But the interesting fact is that both the oldest traditions and the newest legal developments are on the side of placing sovereignty under the law.⁵ The progressive

⁴James L. Brierly, The Law of Nations, 6th ed., pp. 41-93.

⁵Norman J. Padelford, and George A. Lincoln, The Dynamics of International Politics, pp. 166-191.

abandonment of sovereign immunity is one evidence of this, as is the formation of transnational communities like the European Economic Community. Of great significance also is the appearance in the most modern constitutions, such as those of France, the Netherlands, and West Germany, of provisions expressly stating that international law in the form of treaties takes priority over national laws.⁶

What we can hope to discover in our legal research is whether we can show the nations of the world, including the many newer nations, that on the strength of their own deepest legal traditions they can accept without strain or loss of national pride a legal obligation higher and broader than their own local jurisprudence.

In addition, the body of world law can be enriched and modernized by deliberate jobs of research that do the spadework necessary for treaties and codification in such areas as the interpretation and termination of treaties, harms to persons and property, protection of private international investment, the law of international rivers, disarmament, space law, sea law, and the Law of Antarctica. Exciting projects in such areas as these are already in progress at a number of schools and research centers.

⁶Ibid., pp. 178-182.

THE MACHINERY OF LAW

The International Court of Justice at The Hague is, in the words of its Statute, the "principal judicial organ" of the United Nations.⁷ In fact, it is the only one. Since the present Court plays such a key role in the future of world rule of law, it has become imperative for everyone to learn more about it. Lawyers agree that, by any familiar objective tests, this is a good court.⁸ It numbers among its fifteen judges some of the finest international lawyers in the world.⁹

The Court is hampered by cumbersome procedures and practices, but these are not beyond remedy. The Court's opinions are generally excellent in legal reasoning, scholarship, and judicial integrity. The Rule of Law Center at Duke University reviewed a detailed two-year study of the Court in progress to include an exhaustive check of the opinions and votes of all the judges in the Court's history. The study concluded that there is considerable evidence, if any is needed, to show that the judges really think and decide as judges and not as politicians, as some uninformed critics seem to fear they might.¹⁰

⁷Articles 7 and 92.

⁸Consensus of the World Peace Through the Rule of Law Committee of the American Bar Association.

⁹International Court of Justice, Yearbook.

¹⁰Peter J. Liacouras, The International Court of Justice, 2 Vols.

The most direct proof is the fact that judges not infrequently have voted against their own countries when they thought their own country was wrong on the law. Indeed, they have done so in 24 out of 103 votes involving their countries. It might be of interest to note that in the Interhandel¹¹ case the Soviet judge, Kojevnikov, not only voted in favor of the United States on three of five issues but wrote a separate opinion more strongly in favor of the United States position than that of the majority--while the United States judge voted against the United States on one of these issues.

What is needed, then, is not to displace the present World Court, but to make a thorough study of how it can best be supplemented with a complete worldwide system of regional or lower courts, arbitration tribunals, claims courts for private litigants, and--since there will always be disputes that are political and nonjudicable in character--mediation and conciliation agencies.

ACCEPTANCE OF THE LAW

Now, say you have a workable body of law and efficient machinery to apply it--what good is all this if it is not accepted by the parties affected? The third component, then, must be acceptance of the system.

At once we encounter the unhappy fact that less than half the members of the United Nations have accepted the obligatory

¹¹Switzerland v United States, "The Interhandel Case," American Society of International Law, Proceedings, 1958.

jurisdiction of the World Court, and some of these have interposed reservations so severe as to render their acceptance largely illusory.¹² The problem of our own "self-judging" reservation, under which we reserve the right unilaterally to declare a controversy domestic and hence outside the Court's jurisdiction, is by now becoming quite well known. Its repeal was called for repeatedly by President Eisenhower and other top members of his administration, by President Kennedy and his administration, by the American Bar Association, and by many state and local bar associations.¹³ It is not necessary by this time to elaborate upon the issues. There is one point, however, the matter of reciprocity, that has never been sufficiently stressed, and which is important because it should convince even those who are impatient with

¹²France, India, Mexico, Pakistan, Liberia, Sudan, and the Union of South Africa.

¹³When the matter of accepting the compulsory jurisdiction of the court came under consideration by the United States, the American Bar Association urged the full acceptance of the compulsory jurisdiction without reservation of any kind. The Senate Foreign Relations Committee concurred generally, but as a cautionary measure restated the prohibition against intervention in domestic affairs contained in the United Nations Charter, and appended a restatement to the effect that the court's jurisdiction should not apply to "Disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America." The famous Connally Amendment was added during the floor debate on the adoption of the recommendation of the Foreign Relations Committee. It added the following eight words to the previously cited restatement: "As determined by the United States of America."

arguments based on legal ideals or world leadership toward peace, and who want to get down to cold-blooded national self-interest.

Such people assume that the function of the self-judging clause is to throw up a wall against possible loss to ourselves as defendants. In fact, the principal effect is to throw up a wall against all possible remedies for ourselves as plaintiffs. We are not merely walling the opponent out of court. We are walling ourselves out, whenever we have a valid claim.

We need the protection of law more than any other country. We have billions invested within other countries' boundaries, with the ever-possible danger of damage, confiscation, or discrimination. We have hundreds of thousands of tourists abroad, always in danger of personal injury and property damage. We have foreign bases, communications installations, transportation facilities, and economic and technical aid projects. The chances of our needing, as plaintiffs, the help of the Court are many times as great as the chances of our appearing as defendant.

The depositing of a new good-faith acceptance of the Court's jurisdiction is an important move in the over-all drive toward international rule of law, since it will show the world we mean business when we talk of rule of law.

Acceptance of a world legal system may come about in various ways in addition to general acceptance of the World Court's jurisdiction. Indeed, in the case of the Communist countries, the best hope for a beginning may be the possibility of entrusting particular matters to the Court, or a panel of it, or some other

tribunal. Suppose, for example, we reach the day when a real disarmament treaty is found desirable by the Soviet Union. Obviously such a treaty must contain a procedure for settling disputes as to its interpretation--since otherwise the treaty would collapse in a welter of misunderstandings and recriminations within a matter of months. Only a judicial tribunal can ultimately do the dispute-settling job in the time available. All future treaties should contain a clause submitting disputes on interpretation to an international court, as we have done in our recent commercial treaties. If we insist on this clause as a matter of regular policy, we can go a long way toward bringing important areas of potential conflict within the framework of peaceful legal settlement.

COMPLIANCE WITH THE LAW

The fourth component of the law structure of peace is compliance with the decisions of international tribunals once they are rendered. It is a curious fact that although many people worry more about this item than any other, in practice it may prove to be the least worrisome of all. History demonstrates that with very few exceptions the decisions of international tribunals have always been obeyed. This seems to indicate that, if we can bring nations to the point where they so far accept the body and machinery of the law that they allow a case to go to decision, by that time it becomes unthinkable to flout the judgment after it

is rendered. This is a fact of immense significance as we set up our scale of priorities for action. It should help to reassure those people who fear that a world legal system will be ineffectual unless backed by a world army, navy, and air force.

If the record of compliance with international decisions is at least as good as that with domestic decisions, and perhaps better, why is it that some critics sneer at international law and claim that it is something no one pays any attention to? The answer lies in a failure to distinguish between decisions of tribunals and unilateral assertions of legal rights. We allege that Country X has repeatedly broken treaties. We conclude that Country X is lawless and has no respect for international law. But does Country X admit this? Certainly not. It will give you some formula to show that it did not really break the treaty, but merely "interpreted" it. We may be positive we are right. But as long as matters are in this posture, it is impossible to say with impartiality and finality that Country X has broken international law. But let the case go to Court, let the law be applied to the particular facts--and then, when the rights and wrongs have been authoritatively settled, we shall have an unassailable test of the degree of compliance with law.

The record of compliance judged on this basis, then, is one reason why many feel that we can and should build up the structure of law without waiting for the day to come, if it ever comes, when some kind of global political authority comparable to national governments will stand behind the decisions of international

judicial tribunals. Meanwhile, of course, we should study every possible means of strengthening measures short of force to ensure compliance, including public opinion, multilateral treaties, and diplomatic and economic sanctions.

The specific job of building the law structure for peace may seem to be a task of almost insuperable difficulty. But, difficult or not, we must try.

There is one factor that was never present before. The shadow of the nuclear age is over us all. Perhaps the mutual realization of capacity for mutual annihilation will telescope history and enable us to achieve a degree of progress in decades that in other times might have taken centuries.

CHAPTER 4

WORLD PEACE THROUGH THE RULE OF LAW PROGRAM

In 1958, a committee of the American Bar Association chaired by Thomas E. Dewey and composed of international law experts, surveyed international law and legal institutions with a view toward identifying the needs which existed in both fields. After a full year of intensive study, the Committee reported to the American Bar Association's annual convention that:

We believe there is more urgent need, and greater opportunity today than ever, before the American Bar Association and lawyers generally, to play a vital and leading role in carrying forward this great work.¹

The Dewey Committee urged that lawyers work on codification of international law, strengthening of international tribunals, and repeal of reservations to World Court jurisdiction, and that they develop public support for the rule of law.

As a consequence of the Dewey Committee report, the Special Committee on World Peace Through Law was established by the American Bar Association at its 1958 Annual Meeting. The Committee's original assignment was to explore and report upon what lawyers can do of a practical concrete character to advance the rule of law among nations; and to stimulate interest and activity among lawyers and laymen for the advancement of world peace through the extension and expansion of the rule of law.

¹American Bar Association, Report of the Special Committee on World Peace Through Law on the Four Years of Progress and a Program for the Future, p. 7.

The Committee held its first meeting on November 13, 1958, at which time it was reported that the first step toward securing worldwide support among lawyers was successful. The President of the American Bar Association² had introduced the suggestion for a world conference to the International Bar Association at its meeting in Cologne, Germany, on 21 July 1958. Delegates of the International Bar Association meeting expressed great enthusiasm and offered their support for the idea.

During the period November 1958 to March 1959 ideas and recommendations were solicited from well over 10,000 individuals and organizations throughout the world. In response, useful information and many constructive suggestions were received as well as indications of almost universal support and enthusiasm. These served as an invaluable aid in developing the World Peace Through Law program.³

Regional conferences were held in March and April 1959 in Boston, Massachusetts; Charlotte, North Carolina; Chicago, Illinois;

²The Peace through law program received its great impetus when Charles S. Rhyne was president of the American Bar Association. He concentrated most of his attention and public utterances on this crusade during his year as president (1957-58). Ross Malone, who succeeded as president of the American Bar Association, appointed Mr. Rhyne chairman of a new Special Committee on World Peace Through Law, which immediately embarked on a vigorous campaign of action in the fall of 1958. The well-known international lawyer Edgar Turlington, until his untimely death, served as executive secretary to this Committee and provided the committee's program with a solid foundation of research, organization, and publication.

³American Bar Association. Report of the Special Committee on World Peace Through Law on the Four Years of Progress and a Program for the Future, p. 8.

San Francisco, California; and Dallas, Texas. These conferences emphasized the vital importance of cooperation and participation of as many lawyers as possible in the search for a formula for world peace. Each of the conferences was attended by approximately fifty outstanding lawyers, jurists and professors of law. The discussions were far ranging, often heated due to clashing views but always constructive in that participants quickly recognized the need for further developing international law and came up with many ideas as to how that need could be fulfilled.⁴ Repeatedly, participants stressed that lawyers of one nation could never develop a program having global impact, and that a cooperative enterprise involving participation of the lawyers of the world must be developed before meaningful progress could be expected.

In the period 1961-1962 four Continental Conferences brought together within a period of ten months lawyers from more than one hundred nations. These meetings, unique in the history of the legal profession, were devoted to discussions of a proposal for a World Conference of lawyers, and of ways in which lawyers could work together globally to improve existing and develop new international law and legal institutions through a collective and sustained effort to move the world toward the ultimate goal of the international rule of law.⁵

⁴Ibid., pp. 10-11.

⁵Ibid., p.12. Detailed listing of major Conference conclusions.

The Continental Conferences developed a recommended program for a World Conference and a revised Working Paper which was printed in French, Spanish and English.

In July 1963, over one thousand leaders from 105 nations met in Athens, Greece to consider and adopt a program designed to achieve world peace through law. This World Conference resulted in the creation of the World Peace Through Law Center⁶ to carry out a plan or blueprint designed to develop a world legal system with ninety-five committees to implement it. The Conference determined that new and strengthened law rules on every subject of transnational interest are to be developed into a World Law Code and a world court system with trial courts, intermediate appellate courts and final appeals to the World Court at The Hague as key recommendations.

The second World Conference on World Peace Through Law was held in Washington, D. C., on September 12-18, 1965. The Conference was attended by 3,000 judges, lawyers, legal scholars, and observers representing 118 countries. The impact of the Conference upon law, the legal profession and the public was far reaching. In combination with worldwide celebrations of World Law Day,⁷ the Conference focused more attention upon the rule of law as the best route to world peace than had ever been done before.

⁶Walter Carl Clemens, The First World Conference on World Peace Through the Rule of Law, p. 8.

⁷A proclamation by the President of the United States dated 8 Jul. 1965, proclaimed 13 Sep. 1965, as World Law Day in connection with the year 1965 being designated by the United Nations General Assembly as International Cooperation Year.

Opening the world gathering was an impressive judicial procession of national and international high court justices, each attired in judicial robes. A unique forum for the exchange of ideas and opinions between these leading jurists, the Conference set the background for the first world judiciary assembly in history. Two executive sessions for High Court Judges were held at the United States Supreme Court where opportunities for international judicial cooperation were discussed.

Earl Warren, Chief Justice of the United States, delivered the keynote address at the opening session on World Law Day. He declared that the major task of the legal profession is to strengthen existing rules of law and judicial machinery. The Chief Justice reviewed the significant growth in the field of law nationally and internationally and stated:

I believe we of our generation can translate the centuries-old dream of a world ruled by law from dream into reality. In part, my belief is based upon the imperatives of our day which make this a necessity to save mankind from nuclear holocaust. In part, my belief is based upon the fact that there are more laws and more judicial institutions today, nationally and internationally, than ever before in the history of mankind.⁸

The President of the United Nations General Assembly, Alex Quaison-Sackey, called for a strengthening of the United Nations peacekeeping functions and stated:

⁸Earl Warren, "Address of Chief Justice Earl Warren," American Bar Association Journal, Vol. 51, Nov. 1965, pp. 1037-1041.

While it is true that Member States are influenced to some extent by International Law, it is evident that the absence of any sanction or authority to enforce the law makes the Law of Nations an uneasy law. The United Nations must be invested with more effective authority.⁹

The President of the UN General Assembly then cited to the Conference the significant contributions to the ever-increasing corpus of international law made by the United Nations.

Sir Percy Spender, President of the International Court of Justice in the Hague, urged each participant to use his personal and official influence to remove existing reservations to the jurisdiction of the International Court of Justice. In 20 years, less than half of the members of the United Nations have agreed to submit disputes to the International Court of Justice, even with reservations. Although Sir Percy was not optimistic that this generation would see the rule of law accepted among nations, he affirmed his belief that the struggle, no matter how difficult or how long, was mankind's only hope.

President Johnson told the conference that during the past year the United States had been present at 629 international conferences and that since he became President of the United States the country had participated in more such conferences than in the entire first 150 years of its history.

⁹World Peace Through Law Center Bulletin, Second World Conference Sets New Legal Pace, Vol. 2, September-October 1965, Special Conference Edition, p. 2.

President Johnson further stated:

. . . we who seek a world of law must labor to understand the foundation on which law can rest. We must set to work to build it. For if the rule of law is an ideal, the establishment of that rule is the practical work of practical men. We must not let the difficulties of this task lead us into the twin dangers of cynicism or unreasoning faith. For the fact is that if law cannot yet solve the problems of a tormented earth, it is steadily growing in importance and in necessity Law is the greatest human invention. All the rest give man mastery over his world. But law gives him mastery over himself.¹⁰

The work program of the conference recited a few of the principal specific advances in international law since the first World Conference on World Peace Through Law was held in Athens in 1963. It referred, for example, to the declaration of legal principles relating to activities of man in space adopted by the United Nations General Assembly and to the other recent international agreements with respect to space law; the interim agreement for a global communications satellite system signed by forty-six countries; the World Bank convention on the settlement of investment disputes already signed by thirteen countries, in the understanding and acceptance of which the Athens Conference played a recognized part; the 1964 Hague Conventions on the international sale of goods; and the partial test ban treaty of 1963, with some one hundred countries as parties.

¹⁰Lyndon B. Johnson, Address Before the Conference on World Peace Through Law, Department of State Bulletin, Vol. 53, 4 Oct. 1965.

The week-long sessions of the Conference culminated on the last day with the adoption of a final document entitled, "The 1965 Declaration of Faith in World Order Under Law."¹¹ The conferees expressed in this declaration their belief that developments in the world in our time have inseparably linked each nation with every other nation and have made the future of every nation depend on the development of peaceful means for the just and effective settlement of international disputes. They recognized the critical nature of the many disputes that presently shake the earth, but they concluded by solemnly declaring their unshakable faith that, whatever transient disputes there may be, a just world order under law can be achieved, and that, with patient determination and hard work, it will be achieved.

Many of the speakers at the Conference expressed the conviction that only through educated and informed opinion of the peoples of the world can the rule of law ultimately be established in international relations. While the diplomats, aided by universal fear of nuclear destruction, work to try to avoid that fate, it is the central purpose of the World Peace Through Law Center to advance as fast as it can the education of the lawyers of the world and to enlist their aid, whether as citizens and molders of opinion, local, national, or international, or as expert participants, in improving the legal framework.

¹¹World Peace Through Law Center Bulletin, op. cit., p. 8.

At both the Athens Conference in 1963 and the Washington Conference in 1965 there were twelve working sessions--some covering the same general subjects; some different. Both concluded with work programs for the members of the legal profession, as guides to what might be done toward better understanding by lawyers of these incredibly complex international problems, toward greater harmonization of laws where differences impede transactions and cause disputes, toward treaties in certain areas of international concern such as space, communications, trade, and investments, and disarmament, and toward improved means for the peaceful settlement of international disputes at all levels.¹²

One noted difference in the two Conferences is that the Washington Conference delved deeper for ideas and was more specific, more critical, more realistic. For example, the Washington Conference not only resolved to create a special committee to work toward a plan for a system of international courts to deal with "lower-level disputes," but its work program specifically recommended an analysis of the record of existing regional and specialized courts, such as the very active European Court of Justice and the East African Court of Appeals, and of possible detriments as well as benefits to international jurisprudence resulting from the fragmentation of the international court system. For another example, it not only urged continued efforts to improve the International

¹²Cited ABA Journal, op. cit., pp. 1034-1035.

Court of Justice, but for the first time it also recognized doubts as to the extent to which ultimate inability to enforce international court decisions is of significance.

In the field of international law remarkable results have been obtained through worldwide cooperation in consolidating a legal basis for human activity in many important domains by international conventions. The contributions of the world's leading lawyers have materially furthered this momentous activity. It must be recognized, however, that in respect of the most important part of international law, the preservation of world peace through international conventions, the goal is still remote. However, no efforts should be spared to bring all the nations, step by step, closer to attaining their final purpose, a lasting world peace and to secure peaceful international cooperation. In this task the legal authorities, lawyers and professors of law of all nations have a demanding and responsible challenge. The World Peace Through the Rule of Law Program, I am convinced, will have a significant contribution to make in furthering the creation of a legal system aiming at the safeguarding of world peace.

CHAPTER 5

GOVERNMENT LEADERSHIP ACTION IN THE CONCEPT OF WORLD PEACE THROUGH LAW

Political leaders are bound to awaken sooner or later to the tremendous worldwide appeal of the idea of a world ruled by law and make it a part of their platform for worldwide support.

In recent years it has become quite usual for statesmen to use the word "law" in their public speeches. For example, world leaders from all parts of the globe have spoken or sent messages to the regional, continental, and world conferences held by the World Peace Through Law Program over the past eight years extolling the virtues and encouraging the activities of the program.¹ They have also pledged their support and have approved in spirit the aims and efforts of the programs. But up till now, so far as I know, no President or Prime Minister has put the rule of law in a conspicuous position on his political banner. No President or Prime Minister has made the rule of law the major aim of his policy. Neither have any junior politicians done so, so far as I can recall. More than likely the politicians have not thought that the rule of law would be a vote-getting proposition.

But now, I think, the time has come when, here and there, and more and more, able politicians will see the good sense in

¹Messages on file in the World Peace Through Law Center, Washington, D. C. Also published as informal hand-out to Conferees at World Conference.

adopting the advancement of the rule of law as a major theme of their foreign policy. The rule of law can become good politics.

I believe that if the President of the United States does not recognize and grasp the potential of the rule of law as a foreign policy some other world leader will. The leader who becomes the "law man" of the World will go down in history as the greatest of all leaders.

A step in the direction of the establishment of the rule of law as a goal of United States foreign policy was noted in a recent publication by the Department of Defense, which stated in part:

Establishing and strengthening international institutions that can contribute to the building of a peaceful world community under law is a fourth keystone of our foreign policy. Of these institutions, the most important to date is the United Nations. Many regional and specialized international organizations also make significant contributions to the evolution of orderly relations between states.²

A world ruled by law would have room for diversity of national policies, for protection of the self-interest--the vital interests--of nations. Such diversity exists under our national rule of law and a world legal order to prevent war by controlling conflict would perform in the same way. A rule of law internationally is not a cure-all. Conflict and lawbreakers would still exist under such a rule. This is true in England which prides itself on its

²Department of Defense Commanders Digest, Five Goals of US Foreign Policy, Vol. 2, 12 Feb. 1966, p. 3.

rule of law, yet we read of mobs in Trafalgar Square, Christine Keeler and crime in the Soho. We too have mobs and scandal and crime under our rule of law. But as Winston Churchill once said, "With all its defects our rule of law is still the best system yet conceived by the mind of men." And so with all its defects would be a world rule of law.

What about the Russian situation? I am not too familiar with what goes on inside Russia, but I have met some Russian lawyers and I believe in many respects they are as able and knowledgeable as American lawyers except for one basic handicap: fear. No doubt if they had their choice between living in freedom or in fear they would choose freedom but now fear is their constant companion. Russian lawyers are afraid to say what they think.

(One notable exception appears to be that the Russian judges on the International Court of Justice have from time to time expressed their honest beliefs regardless of reprisal.) Russian lawyers are fearful to express agreement with their colleagues of other nations obviously because reprisals await if such agreements do not coincide with Communist ideology or dialogue aimed at dominating the world. Until this fear is overcome progress in getting Russia to accept world law rules and legal institutions will be slow. Some Russian lawyers claim that because Russia adheres to such universally respected law rules as the Law of the Sea, the Law of Diplomatic Immunity and the Postal Convention this proves their willingness to abide by the rule of law. Yet self-interest and worldwide public opinion back of these law rules indicate why

Russia goes along and really force her to go along. When one seeks to add to these universally accepted law rules such subjects as space, trade or travel, they balk. Self-interest and world opinion are not yet strong enough to force their acceptance by the Russians but it may soon be that strong.

A foreign policy expressed as "the rule of law" is a most readily comprehensible foreign policy among most of the world's people. They recognize it as a simple yet meaningful plan accommodating their diverse interests within the rule of right reason. It encompasses the best idea yet conceived by the mind of man for peaceful relations among men and nations. It does not attempt Utopia but merely to prevent and control, or peacefully decide, conflict among men and nations. It embodies broad principles to which all right thinking men aim to adhere. The world is surely but slowly moving toward such a rule. A plan for a world ruled by law is not beyond the capacity of those to whom it is addressed: the people of the world. While a world ruled by law has been dreamed of for centuries, the dangers, capacities, and "one world" aspects of today give us a better chance to accomplish this goal than our predecessors.

CHAPTER 6

CONCLUSIONS

We live in an era in which concentrated research involving worldwide exchanges of knowledge and experience in the physical sciences has brought dramatic achievements. When the scientists split the atom, their success was the end result of the combined cumulative research of men of science from throughout the world. The knowledge and experience of these thousands of scientists was used to achieve this great goal. Centuries of hard work were thus finally crowned with success, and a seemingly impossible result was thereby accomplished.

My thesis is that we can and must accomplish our objective in like manner. But our approach must be different. Instead of breaking society down to its most minute elements, we must bind it together into a viable whole. Achieving and maintaining a rule of law strong enough to regulate actions of nations and individuals in the world community is no more dreamy, impossible or impracticable than was the idea of splitting the atom, or putting a man on the moon, or sending a missile to Mars a few years ago. I believe we of our generation can translate the centuries-old dream of a world ruled by law from dream into reality. In part, my belief is based upon the imperatives of our day which makes this a necessity to save mankind from nuclear holocaust. In part, my belief is based upon the fact that there are more law and judicial institutions today, nationally and internationally, than

ever before in the history of mankind. Given this knowledge and reliance and taking note of the necessity that we succeed in order to survive, I submit below factors we possess which should enable us to move forward in our quest for a world ruled by law.

First. We know more about law in the world internationally and within nations than any other generation of the legal profession. There is an ever-growing worldwide dialogue among men of the law which is making itself a factor in world affairs. Human unity and interdependence of men and nations upon each other have reached such a degree that none of us can remain ignorant or indifferent to what is happening in law in other nations or in international organizations. Because of the faster and more comprehensive communications which now exist we know more about the basic facts of the law systems and judicial systems of the world than ever before.

This is not to say our knowledge is as complete as it should be, but only that it is greater than in the past and is continuing to grow. Through exchanges of law book, law journals and other media, we are learning more about law and justice all over the world. In the field of law, we will soon be able to bring the totality of man's legal knowledge and experience to bear on our task of creating enough law and enough judicial agencies to enable the world to operate under the rule of law.

Second. More and better law exists today in each nation than ever before. All recent surveys prove this fact. Nearly every nation is reforming, updating and expanding the rule of law

within its borders. This tremendous ferment and growth in the field of law on a global basis is the response by the law to the great changes which are the hallmark of our day. Newly developing nations have new constitutions and new law codes. Many illustrations could be cited nation by nation. The most obvious development is the expansion of protections for the individual, a response to the universal striving for human dignity and freedom.

Third. More international law exists today than ever before. The pace of discovery and invention has forced this rapid development of law. In the past 20 years, the United Nations and its specialized agencies have spurred, spawned, updated or sponsored more international law and legal institutions than was created in all human history. In the preoccupation with some of the more devious problems of the United Nations, we sometimes overlook the law that has been generated by it. But when one takes an inventory of what has happened, this growth of law and legal institutions stands forth as conclusive proof of how tremendously valuable the United Nations has been, and is today. It must be noted that in every field, on every subject, where law and judicial agencies are in existence they are working well and their acceptance and use are at an all-time high. That law which is adequate will work where used internationally is easily proved. Those relations of men and nations now amply covered by world law provide this proof. I cite the Law of the Sea, the Law of Diplomatic Immunity and the Postal Convention. For relations and contacts in those

fields operate smoothly under law rules that are universal because so many nations are parties to those treaties. If we had hundreds of other subjects covered by such universally accepted law rules, frictions and disputes would be lessened and world peace through law would be within reach. Our great task is to draft and sell to the peoples and governments of nations the hundreds, perhaps thousands, of agreements needed to cover in an adequate manner transnational relations of men and nations. With the ever-growing increase in international trade, travel, and other contacts, the number of such agreements needed for this purpose will increase greatly in the years ahead. We must therefore set up law drafting, law creating procedures, and methods to meet this obvious need.

Fourth. International judicial bodies have grown in number and use. We have a World Court whose use and prestige are increasing constantly; in fact there is a growing tendency in treaties to expressly provide for jurisdiction of the World Court over disputes involving their provisions.

Fifth. We are re-examining traditional concepts of international law in the light of the world of today, not only as to applicability of international law to individuals, but in an attempt to insure that international law of our day takes into consideration the history, traditions, customs, and needs of newly independent and newly developing nations. Thus the gap between East and West is being bridged. New international law is being created which is acceptable both to lawyers and the peoples of the East.

and West because it is a molding of the ideas and ideals of all mankind.

Sixth. Heads of state and other leaders of nations are giving more and more attention to world law and are resorting to it with increasing frequency in their dialogue among themselves in their conduct of foreign affairs. In part, this is because more international law exists and it, therefore, offers an excellent starting point for many efforts in foreign relations. Nearly every dispute between nations today begins with a citation by both sides of alleged rights or claims under international law.

Seventh. The peoples of the world are more and more aware of the promise and potential of a world ruled by law. This is shown by reports in news media and publications on a worldwide basis. One finds that religious, scientific and other organizations in their resolutions and statements more and more are urging a world rule of law. True, they ask for it in a wondering sort of way without specifying the steps to achieve it. But discussions, arguments, speeches, and debates on this subject all tend to educate both lawyers and laymen on the value of law in the search for ways and means of achieving and maintaining world peace. Law, in ultimate thrust, is the end result of conferences, discussions, diplomacy, resolutions, and other public consideration. Especially valuable in building world law is public enlightenment, education, interest and support. All world law must result from international cooperation and agreement by nations and leaders of nations will

hardly agree to any treaty or convention unless their people want them to agree.

Eighth. Judges, professors and lawyers of the world are becoming organized to take advantage of the factors I have mentioned above. This organized strength of the legal profession helps make possible a breakthrough in the growth and development of world law parallel to those in science and other disciplines. We are learning to think and act globally for the first time in history. We can no longer await the slow and episodic growth over the centuries as was the case, for example, of the law of the sea. A more speedy and orderly process is essential and is evolving out of necessity.

This thesis of the law's dramatic growth is not intended to present the rule of law as a panacea for peace or as creating a Utopia in ultimate thrust. Nations are run by men, and differences and disputes are inherent in human nature. The rule of law in a nation or internationally does not end all disputes or prevent the breaking of the law. In its simplest form, a law system is a set of rules to govern and guide human conduct so as to avoid conflicts and a court system for peaceful decision of the inevitable disputes that will arise.

No law system is put forth as providing perfection. Perfect justice is an ideal we all strive for but never quite accomplish. But the lesson of history is that when law systems and court systems become adequate within nations they do provide order and

peace. When such systems are developed for the world community, they can and will perform the same service internationally. The international law that exists already is a force for peace and as we strengthen and expand it the occasions for disputes leading to war will lessen.

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